

(6)

## COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Name: L<sup>r</sup> Sermeno Larry A  
(Last) (First) (Middle Initial)Prisoner Number: AM12470Institutional Address: SATF F1A-3-1<sup>u</sup>, P.O. Box 624,  
Concoran, CA 93212FILED  
OCT 12 2016  
SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

Larry A. Sermeno  
(Enter your full name.)

(PR) CV16 5894

vs.

Oklahoma Dep. of Corrections et al.  
Debbie Aldridge, Warden,  
M.B.C.C. et al.  
(Enter the full name(s) of the defendant(s) in this action.)Case No. \_\_\_\_\_  
(Provided by the clerk upon filing)COMPLAINT UNDER THE  
CIVIL RIGHTS ACT,  
42 U.S.C. § 1983+ Jury Trial Demanded  
+ Expedited Review Requested  
+ Preliminary Injunction Requested  
+ Monetary Damages Requested

## I. Exhaustion of Administrative Remedies.

**Note:** You must exhaust available administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.A. Place of present confinement SATFB. Is there a grievance procedure in this institution? YES ☒ NO ☐C. If so, did you present the facts in your complaint for review through the grievance procedure? YES ☐ NO ☒

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue any available level of appeal, explain why.

1. Informal appeal: Was granted correspondence - see  
attached documents "Introduction", initial pages  
of each ground, and exhaustion section

1 2. First formal level: Same as "1"

2  
3  
4 3. Second formal level: Same as "1"

5  
6  
7 4. Third formal level: Same as "1"

8  
9  
10 E. Is the last level to which you appealed the highest level of appeal available to you?

11 YES ☐ NO ☐ Same as "1"

12 F. If you did not present your claim for review through the grievance procedure, explain why.

13 Same as "1"

14  
15  
16 **II. Parties.**

17 A. Write your name and present address. Do the same for additional plaintiffs, if any.

18 Larry A. Serrano, STATE F1A-3-10, P.O. Box 5244,  
19 Corcoran, CA 93212

20  
21 B. For each defendant, provide full name, official position and place of employment.

22 Joe M. Allbaugh, Interim Director, Oklahoma Depart-  
23 ment of Corrections

24 Debbie Aldridge, Warden, Mabel Bassett Correc-  
25 tional Center, Mcloud, OK

**III. Statement of Claim.**

State briefly the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

See attached documents

**IV. Relief.**

Your complaint must include a request for specific relief. State briefly exactly what you want the court to do for you. Do not make legal arguments and do not cite any cases or statutes.

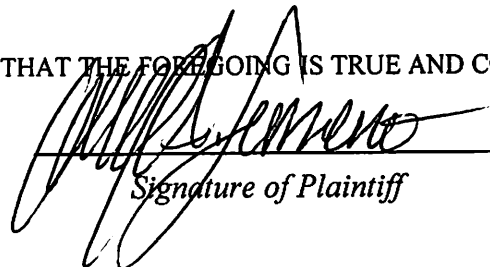
See attached page "Prayer For Relief"

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on:

10/7/16

Date



Signature of Plaintiff

## Prayer For Relief

Petitioner prays the Court;

(1) Enjoin defendants from utilizing the prison regulations to deny legal and/or regular correspondence

(2) Order defendants to bring the prison regulations up to constitutional standards

(3) Award attorney, and other fees to plaintiff

(4) Declare what plaintiff's rights are under the Constitution pertaining to the issues raised in this complaint

(5) Order telephonic appearances for plaintiff for all hearings necessary pursuant to 42 U.S.C. § 19-97e(f)(2)

(6) Order expeditious review and proceedings up to trial unless otherwise

Name: Larry A. SermenoAddress: SATF FLA-3-74P.O. Box 5244Concoran, CA 93212CDC or ID Number: AM2420

District Court of Oklahoma  
County of Pottawatomie  
 (Court)

|   |     |
|---|-----|
| <u>Larry A. Sermeno et al.</u>  |     |
| Petitioner  | vs. |
| <u>Debbie Aldridge - Warden, Mabel Pa-</u><br><u>ckett Correctional Center et al.</u> |     |
| Respondent  |     |

## PETITION FOR WRIT OF HABEAS CORPUS

No. \_\_\_\_\_

(To be supplied by the Clerk of the Court)

Immediate Action Required  
Emergency Hearing Required

## INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

## This petition concerns:

- ☐ A conviction
 ☐ Parole  
☐ A sentence
 ☐ Credits  
☒ Jail or prison conditions
 ☐ Prison discipline  
☐ Other (specify): \_\_\_\_\_

1. Your name: Larry A. Serrano

2. Where are you incarcerated? ESATF

3. Why are you in custody? ☒ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: \_\_\_\_\_

c. Name and location of sentencing or committing court: Butte County Superior Court,

One Court Street, Oroville, CA 97165

d. Case number: CM035385

e. Date convicted or committed: \_\_\_\_\_

f. Date sentenced: \_\_\_\_\_

g. Length of sentence: \_\_\_\_\_

h. When do you expect to be released? \_\_\_\_\_

i. Were you represented by counsel in the trial court? ☒ Yes ☐ No If yes, state the attorney's name and address:

4. What was the LAST plea you entered? (Check one):

☐ Not guilty
 ☐ Guilty
 ☒ Nolo contendere
 ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury
 ☐ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial

*[Handwritten signature]*

# Introduction

Petitioner is currently litigating in California, and was, at the time that the issues in this petition arose. Petitioner needed/needs legal advice and information from Amber Hilberling, a woman prisoner in the custody of the Oklahoma Department of Corrections ("ODOC"). In order to correspond with Ms. Hilberling, petitioner is required, under the California Code of Regulations, Title 15, Division 3 ("15 C.C.R." Title 15"), to fill out a CDCR 1074 "Request For Correspondence Approval" and send it to his Correctional Counselor I ("CCI") for approval, who will then approve or deny the correspondence approval request and forward it to his/her supervisor for review of their decision to approve or deny the correspondence request. Once a decision has been made by their supervisor, they must forward the correspondence approval request to the institution where "Inmate #2" (the intended recipient of mail) is housed, for a supervisor to approve or deny the correspondence request. If the supervisor approves the request, both inmates can begin sending mail to each other. If the re-



1 quest is denied, in general, each inmate  
2 must pursue the administrative appeal  
3 process at their respective institutions.  
4

5 In this particular case, Petitioner  
6 was approved for correspondence with  
7 Amber Hilberling by the California Depart-  
8 ment of Corrections and Rehabilitation ("CD-  
9 CR") and therein, his CCI and her superv-  
10 isor at Correctional Training Facility ("CTF").  
11 The Oklahoma institution where Ms. Hilb-  
12 erling is housed denied the correspondence  
13 approval request. Petitioner was denied on  
14 the basis of "immediate family only," without  
15 an accompanying rule, policy, regulation, or  
16 other authority. Petitioner does not believe  
17 that Ms. Hilberling filed an administrative  
18 appeal at her institution, of the decision  
19 to deny correspondence approval request. Nonethe-  
20 less, Petitioner brings two Constitutional  
21 issues surrounding the denial of the cor-  
22 respondence approval request to this Court. If/  
23 should the Court were to decide one or  
24 both of the issues in Petitioner's favor,  
25 it would void the decision of the OPC  
26 institution, and allow Petitioner correspondence  
27 with Amber Hilberling, to satisfy the  
28 First and 4<sup>th</sup> Amendments (U.S. Constitution).



## Governing Standards

I  
Petitioner Has A Constitutional Right To  
Access To Courts, Petition The Government, and  
Communication By Way Of Prisoner Advice

The First Amendment rights of prisoners, as articulated by the United States Supreme Court, come in various forms. The relevant forms in this case are access to the courts, petition the government, and communication. Particularly in this case, is legal advice/information from a prisoner to present claimed violations of fundamental constitutional rights to the Courts. Under the High Court's precedents, Petitioner has a federal right to obtain legal advice/information from a prisoner to satisfy the First Amendment.

In Shaw v. Murphy (2001) 532 U.S. 223, 231 n.3, the High Court stated "under our right-of-access precedents, inmates have a right to retain legal advice from other inmates... when it is necessary means for ensuring a reasonably adequate opportunity to present claimed violations of fundamental

constitutional rights to the courts." (quoting  
 Lewis v. Casey, 518 U.S. 343, at 350-51 (1996)  
 (quoting Bounds v. Smith 430 U.S. 817, at 825  
 (1977)).

In Johnson v. Avery (1968) 393 U.S.  
 483, the High Court made clear that priso-  
 ners have a right to assist each other  
 with legal drafting of documents for inmates  
 to exercise their rights to the access of  
 courts. The Court relied in part on Ex  
 Parte Hull (1941) 312 U.S. 546. It is clearly  
 established that Petitioner has a fundamental  
 constitutional right to access the courts, pet-  
 ition the government, and communication by  
 way of legal advice/information from Ms.  
 Hilberling.\*

## II.

The Prison Regulation Denying Correspon-  
 dence Is Invalid Because It Is Not Re-  
 asonably Related To Legitimate Penological  
 Interests

In Turner v. Safley, 482 U.S. 78,  
 89-91, the United States Supreme Court  
 held that when a prison regulation  
 impinges on inmates constitutional rights,

\*Also see 15 C.R. §§3084.23A, 3163, and 3270. Petitioner requests that  
 the Court understand Petitioner's presentation of the "governing  
 standard" to be in alignment to the regulations cited above.

1 the regulation is valid if it is reason-  
2 ably related to legitimate penological interests.  
3 In determining the reasonableness of  
4 a regulation, the Court cited four factors  
5 to be considered.

6  
7 First, there must be a valid, ra-  
8 tional connection between the prison regu-  
9 lation and the legitimate governmental  
10 interest put forward to justify it. The  
11 logical connection must not be so rem-  
12 ote as to render the policy arbitrary  
13 or irrational. And, where First Amendment  
14 rights are implicated, the governmental ob-  
15 jective must avoid viewpoint discrimination.

16  
17 Second, the reasonableness of the  
18 prison regulation will be affected by wh-  
19 ether there are alternative means of ex-  
20 exercising the right that remain open to  
21 prison inmates. Greater deference will be acc-  
22 orded officials when such alternatives are  
23 available.

24  
25 Third, the impact accommodation of  
26 the asserted constitutional right will have  
27 on guards and other inmates, and on  
28 the allocation of prison resources generally,

1 should be taken into account. The ripple  
 2 effect on others may provide a dispositive  
 3 reason for sustaining administrative discretion.  
 4 ion.

5  
 6 Finally, the absence of ready  
 7 alternatives is evidence of the reasonableness  
 8 of ~~that's~~ a prison regulation. If the claim-  
 9 ant can articulate an alternative that  
 10 fully accommodates the prisoner's rights at  
 11 de minimis cost to valid penological inter-  
 12 rests, a Court may consider that as  
 13 evidence that the regulation does not sati-  
 14 sfy the reasonable relationship standard.  
 15

### 16 III.

17 ODOC/MBCC Has/Have An Unconstitution-  
 18 al Policy/Practice/Custom/Procedure To Deny  
 19 Correspondence Approval Attributable To  
 20 The Director/Interim and The Warden

21  
 22 In order for a petitioner to  
 23 plead that a single incident of unconsti-  
 24 tutional activity violated a Federal Consti-  
 25 tutional right as a policy/practice/custom/  
 26 procedure, "proof of a single incident of  
 27 unconstitutional activity... under Monell...  
 28 includes proof that it was caused by

1 an existing, unconstitutional policy<sup>15</sup> municipal  
 2 policy, which policy can be attributed to  
 3 a municipal policymaker." City of Oklahoma  
 4 v. Tuttle (1989) 471 U.S. 808, 823-24; Also  
 5 see Monell v. New York City Dept. of Social  
 6 Services (1978) 436 U.S. 658.\*

7  
 8 The unconstitutional policy that  
 9 Petitioner alleges, is constitutionally deficient  
 10 in having a legitimate penological interest  
 11 st, and equally protected<sup>15</sup>ing Petitioner, Amber  
 12 Hilberling, and taxpayers, following within  
 13 Tuttle and Monell!

14  
 15  
 16  
 17  
 18  
 19  
 20  
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 22  
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 26  
 27  
 28  
 \*For precedent on allowing a petitioner to use civil rights/Constitutional violations on habeas corpus, see: City of Boerne v. Flores (1997) 521 U.S. 507; Employment Division v. Smith (1990) 494 U.S. 872; Miller v. Reed (9th Cir. 1999) 176 F.3d 1202, 1207; Thomas v. Anchorage (9th Cir. 1999) 116 F.3d 1692, 100 n.6 (hybrid rights, mandates script script); Also see Haywood v. Brown (2009) 173 Fed.2d 920,

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926 (State Courts are fully competent to adjudicate federal claims)



## 6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4.

For additional grounds, make copies of page 4 and number the additional grounds in order.)

DOC. / Debbie Aldridge - Warden Has An Unconsti-  
tutional Regulation of Denying Communication,  
Access To Court, and Right To Petition The Govern-  
ment In Violation of The First Amendment

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

On or around February 16th, 2016  
Petitioner sent a "Request For Correspondence  
Approval" to his Correctional Counselor I  
St. Dunaven, for approval to correspond with  
Amber Hilberling (O.D.C.# 672250). On or around  
that day, correspondence was approved  
by Dunaven, and thereafter the Facility  
Captain P. Santiago. The Deputy Warden of  
Mabel Bassett Correctional Center (MBCC) denied  
correspondence approval citing "Immediate family  
only," on March 8th, 2016. Petitioner brings  
this petition challenging the regulation as  
unconstitutional under the First Amendment,

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Turner v. Safely (1987) 482 U.S. 78, 89; Shaw  
v. Murphy (2001) 532 U.S. 223; First Amend-  
ment (U.S. Const.) - Communication, Access To Court,  
Petition The Gov't; Standard Minimum Rules For  
The Treatment of Prisoners; Johnson v. Avery (1968)  
393 U.S. 483; Ex parte Hull (1941) 312 U.S. 546; 18 U.S.C. §§ 41-42

1 and within that, not satisfying the  
2 prongs set in *Turner v. Safely* that  
3 would satisfy the State's interests.

4  
5 The Oklahoma Department of  
6 Corrections, and Warden Debbie Aldridge, have  
7 no legitimate penological interest in denying  
8 correspondence between Petitioner and Ms.  
9 Amber Hilberling. There are no gang  
10 affiliations between either of them, and  
11 only allowing "immediate family" denies free  
12 speech/communication. The staff did not  
13 cite any other valid reason or purpose  
14 for denying communication that is con-  
15 stitutionally mandated to be allowed.

16  
17 Nothing in the denial of cor-  
18 respondence stated a legitimate safety, security,  
19 or administrative concern of the MBCC/  
20 O.D.C. Since the Deputy Warden effect-  
21 ively set in stone, the basis of the  
22 State of Oklahoma's/OBCC's litigation, the  
23 MBCC Warden/Deputy Warden have shown  
24 that there is no legitimate safety, security,  
25 or administrative concern. There is no harm  
26 in allowing legal correspondence between  
27 both Petitioner and Ms. Hilberling, nor regular  
28 correspondence. Both, Petitioner and Ms. Hilb-

erling are entitled to their Federal Constitutional rights to Communicate under the First Amendment to the U.S. Constitution, and thereafter Access To The Courts and Petition the Government by way of that Communication, on this prong of the Turner test.

Nothing in the denial of correspondence stated that there was or was not a less restrictive means to allow communication/correspondence between Petitioner and Ms. Hilberling. Petitioner contends that it should be presumed that there is a less restrictive means, if the Warden/Deputy Warden cannot/did not state a legitimate need for the restrictive nature of the denial. This especially makes sense under these particular circumstances, because there is a less restrictive means—simply allow correspondence between Petitioner and Ms. Hilberling. If it is presumed that there was not a less restrictive means for correspondence, that would be overcome by the fact that there is a simple and less restrictive means to allow communication between Petitioner and Ms. Hilberling—which is to simply allow correspondence.

1 As stated for prong one /the  
 2 first prong explanation, there are no  
 3 legitimate safety, security, or administrative  
 4 concerns for the MBCC, so the restrict-  
 5 ion on correspondence, whether presumed  
 6 that there was or was not a less  
 7 restrictive means to allow correspondence,  
 8 is unconstitutional under the First Amendm-  
 9 ent. Petitioner contends that he and  
 10 Ms. Hilberling are entitled to their Federal  
 11 Constitutional rights to Communicate, Access  
 12 To The Courts, and Petition The Government  
 13 by way of that Communication, on this  
 14 prong of the Turner test.  
 15

16 Nothing in the denial of corresp-  
 17 ondence, ~~shows~~ ~~under~~ that allowing Petiti-  
 18 oner and Ms. Hilberling to communicate ~~to~~  
 19 would cause an undue hampering of prison  
 20 resources, nor could it be. Prisoners are  
 21 constitutionally entitled to writing supplies  
 22 also under the First Amendment, so the  
 23 MBCC would expend no more than it  
 24 already is required to under its First  
 25 Amendment obligation. Furthermore, the  
 26 MBCC administration would not be doing  
 27 any more work than it is required to.  
 28 Lastly, it is believed that Ms. Hilberling



1 purchases her own writing supplies, saving  
2 the prison money, and even contributing  
3 to the prison resources. Petitioner contends  
4 that he and Ms. Hilberling are entitled  
5 to their Federal Constitutional rights to  
6 Communicate, Access To The Courts, and Peti-  
7 tion The Government by way of that  
8 Communication, on this prong of the  
9 Turner test.

10  
11 Nothing in the denial of corre-  
12 spondence shows that prison staff would  
13 be unduly distracted/taken away from  
14 their regular assigned positions/places within  
15 the prison, or that allowing correspondence  
16 between Petitioner and Ms. Hilberling would  
17 significantly effect staff or prisoners in  
18 any way. The issue of correspondence ~~is~~<sup>is</sup>  
19 under the present circumstances is of  
20 ~~no~~<sup>is</sup> little to no interest of effect on  
21 staff or prisoners. Staff and prisoners  
22 would continue their regular routines everyday  
23 should this petition be granted. Petitioner  
24 contends that he and Ms. Hilberling are  
25 entitled to their Federal Constitutional rights  
26 to Communicate, Access To The Courts, and  
27 Petition The Government by way of that  
28 Communication, on this prong of the Turner test

1 Lastly, nothing in the denial  
2 of correspondence would set precedent for  
3 MBCC prisoners to "flood the ~~ad~~ MBCC ad-  
4 ministration with litigation" or otherwise  
5 "open the floodgates to litigation." The corre-  
6 spondence issue under the present circumst-  
7 ances is of little to no interest to  
8 MBCC prisoners, at least directly. The little  
9 interest that there may be is due to  
10 correspondence of MBCC/ODOC prisoners being  
11 denied correspondence for the same rea-  
12 son as Petitioner. Should the Court grant  
13 the petition, MBCC/ODOC prisoners, and  
14 even members of the public, will be  
15 able to communicate with each other  
16 without an unconstitutional impediment. The  
17 most that the prison administration would  
18 face, would be granting requests for corresp-  
19 ondence and forwarding carbon copies where  
20 they need to go. Petitioner contends that  
21 he and Ms. Hilberling are entitled to  
22 their Federal Constitutional rights to Commu-  
23 nicate, Access To The Courts, and Petition  
24 the Government by way of that Comm-  
25 unication, on the /this last prong of the  
26 Turner test

27  
28 The Turner Court emphasized, "



1 prison walls do not form a barrier se-  
2 parating prison inmates from the protect-  
3 ions of the Constitution." *Turner v. Saf-*  
4 *ley*, 482 U.S. 78, 84 (1987). Accordingly, Petitioner  
5 has First Amendment rights and 14<sup>th</sup> Amen-  
6 dment rights that cannot be impeded me-  
7 rely because he is a prisoner, especially  
8 since the regulation/rule/policy/custom/practice  
9 that is being used is invalid to begin  
10 with. The staff of ODOC/MBCC are  
11 not using a regulation that satisfies  
12 the *Turner* test, or they are otherwise  
13 not explaining how the regulation satisfies  
14 the *Turner* test /or how the prongs  
15 set out in *Turner* tip in their favor  
16 /show a legitimate penological interest.  
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28

7. Ground 2 or Ground \_\_\_\_\_ (if applicable):

ODOC/MBCC Has/Hav~~er~~e An Unconstitutional Policy/Practice/Custom/Procedure That Denies First Amendment rights (see Ground 1), and Equal Protection under the 14th Amendment (U.S. Const.)

a. Supporting facts:

The Director/Interim Director of the ODOC, and Debbie Aldridge, Warden of MBCC, are official policymakers of the ODOC, and MBCC.

On or around February 16th, 2016, Petitioner sent his Correctional Counselor J. S. Dunaven a "Request For Correspondence Approval." It was granted on the aforementioned date, and approved by the Facility Captain P. Santiago on March 25th February 25th, 2016.

On March 8th, 2016, the Deputy Warden denied correspondence approval citing "immediate family only."

Presumably, the Deputy Warden was

b. Supporting cases, rules, or other authority:

U.S. Const. - 14th Amend - Equal Protection Clause; City of Oklahoma v. Tuttle (1985) 471 U.S. 808; Monell v. N.Y.C. Dept. of Social Services (1978) 436 U.S. 658; Supremacy Clause of the U.S. Constitution; 18 U.S.C. §§ 241-242

1 following Oklahoma's prison regulations)  
 2 for prisoner correspondence  
 3

4 The prison regulation denying  
 5 correspondence ~~is~~ <sup>is</sup> unless someone is  
 6 "immediate family" is unconstitutional under  
 7 the First Amendment to the U.S. Constitution,  
 8 and the Equal Protection Clause under the  
 9 14<sup>th</sup> Amendment to the U.S. Constitution  
 10

11 The prison regulation denying  
 12 correspondence unless someone is "im-  
 13 mediate family" is used as a policy/practice/  
 14 custom/procedure to deny individuals their  
 15 First Amendment and 14<sup>th</sup> Amendment  
 16 rights to the U.S. Constitution  
 17

18 The ODOC and MBCC have a  
 19 policy/practice/custom/procedure of using the  
 20 prison regulation denying correspondence un-  
 21 less someone is "immediate family" to deny  
 22 correspondence to individuals in violation of  
 23 the First and 14<sup>th</sup> Amendments to the  
 24 U.S. Constitution  
 25

26 The ODOC and MBCC have been,  
 27 and are using, an unconstitutional prison  
 28 regulation in conjunction with an uncon-

stitutional policy/practice/custom/procedure to deny correspondence unless someone is ~~and~~<sup>is</sup> "immediate family," in violation of the First and 14<sup>th</sup> Amendments to the U.S. Constitution

The ODOC and MBCC have used the unconstitutional prison regulation in conjunction with the unconstitutional policy/practice/custom/procedure to deny correspondence between Petitioner and Ms. Hilberling in violation of the First and 14<sup>th</sup> Amendments to the U.S. Constitution

The ODOC and MBCC are using the unconstitutional prison regulation in conjunction with the unconstitutional policy/practice/custom/procedure to deny correspondence between Petitioner and Ms. Hilberling in a continuing manner in violation of the First and 14<sup>th</sup> Amendments

The ODOC and MBCC have used, and are using, the unconstitutional prison regulation, independently, and in conjunction with the unconstitutional policy/practice/custom/procedure in a manner that does not satisfy the test set out in *Turner v. Safley*

1 The Director/Interim Director and  
2 Warden of MBCC/Deputy Warden of MBCC,  
3 as official policymakers have participated in,  
4 directed, and failed to prevent constitutional  
5 violations of Petitioner's First and 14th Ame-  
6 ndment rights by authorizing the use of  
7 the unconstitutional prison regulation, independen-  
8 tly, and in conjunction with, the unconstitut-  
9 ional policy/practice/custom/procedure to deny  
10 Petitioner and Ms. Hilberling correspondence or  
11 otherwise deny Petitioner's correspondence with  
12 Ms. Hilberling

13  
14 The Director/Interim Director and  
15 MBCC Warden have discriminately applied  
16 the already discriminate<sup>s</sup> inate regulation, indepe-  
17 ndently, and in conjunction with, the uncons-  
18 titutional policy/practice/custom/procedure, by  
19 allow<sup>s</sup>ing the "Dr. Phil" show to corresp-  
20 ond with Ms. Hilberling, around late 2015  
21 to early 2016 sometime

22  
23 The unconstitutional prison regulation,  
24 independently, and in conjunction with, the  
25 unconstitutional policy/practice/custom/procedure  
26 denies Petitioner, Amber Hilberling, and The  
27 People of the United States, as a whole,  
28 their First and 14th Amendment rights



8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):

b. Result: \_\_\_\_\_ c. Date of decision: \_\_\_\_\_

d. Case number or citation of opinion, if known: \_\_\_\_\_

e. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:

a. Result: \_\_\_\_\_ b. Date of decision: \_\_\_\_\_

c. Case number or citation of opinion, if known: \_\_\_\_\_

d. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

N/A

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

Petitioner did not have to exhaust any remedies because his request for correspondence approval was granted/approved by his CCI and the supervisor of his CCI. Amber Hilberling did not exhaust remedies, as far as Petitioner is aware. The CDCR administrative appeal system is unavailable to Petitioner. The CDCR 602 appeal system

\* See *Woodford v. Ngo* (2006) 548 U.S. 81; *Williams v. Paramo* (9th Cir. 2015) 775 F.3d 1182  
b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No  
Attach documents that show you have exhausted your administrative remedies.



1 does not allow for the appeal of an  
 2 administrative ~~appeal~~<sup>is</sup> decision of another  
 3 state's department of corrections. CDCR  
 4 does not supply administrative appeal forms  
 5 and/or rules and regulations for other  
 6 state's<sup>is</sup> departments of corrections, or else  
 7 petitioner would have pursued available/obtain-  
 8 able remedies to exhaust the ODOC's  
 9 administrative appeal process.\*

10  
 11 Since Ms. Hilberling was unknow-  
 12 ing that Petitioner was Unrequesting/had  
 13 requested correspondence approval, there  
 14 was no reasonable expectation that she  
 15 would appeal the denial for correspondence  
 16 approval. She did not really know Petiti-  
 17 oner alot/at all, but whether she corres-  
 18 ponded with Petitioner was her choice to  
 19 make, not the ODOC's /MBCC's. Had Ms.  
 20 Hilberling somehow been aware that Pet-  
 21 itioner was ~~is~~<sup>is</sup> attempting to seek legal  
 22 information and advice from her, its very  
 23 likely she would have appealed the deni-  
 24 al by MBCC for correspondence approval.

25  
 26 As explained above, the ODOC's  
 27 administrative appeal system is unobtainable.  
 28 CDCR does not supply ODOC administrative  
 \*See, e.g., *Rosenfield v. Malcolm*, 45 Cal 559, 560 (the mere possession by some  
 official body of a continuing supervisory or investigatory power does not itself  
 suffice to afford an administrative remedy unless the statute or regulation  
 under which that power is exercised establishes clearly defined machinery for  
 the submission, evaluation, and resolution of complaints by aggrieved parties)

1 appeal forms, rules, or regulations. There was  
 2 absolutely no way for Petitioner to appeal  
 3 the administrative decision denying Petitioner  
 4 correspondence approval for Ms. Hilberling.\*  
 5

6 Even though Petitioner explains  
 7 why he could not exhaust ODOC adminis-  
 8 trative appeal remedies, he nonetheless con-  
 9 tends that since he is alleging the  
 10 prison regulation to be unconstitutional, as  
 11 well as the policy/practice/custom/procedure  
 12 in using the prison regulation to deny  
 13 Petitioner, Amber Hilberling, and The People of  
 14 the United States their First and 14th  
 15 Amendment rights as stated in this  
 16 petition, he does not have to exhaust.  
 17 Should the Court find that the ODOC's  
 18 /MBCC's prison regulation is invalid/uncon-  
 19 stitutional, the Warden/Deputy Warden's  
 20 decision will be void, showing that they  
 21 never had any lawful authority to deny  
 22 correspondence to begin with, at least for  
 23 that basis/reasoning of "immediate family  
 24 only."  
 25

26 The ODOC's/MBCC's prison regulat-  
 27 ion is seemingly "underground"\* in nature,  
 28 along with AP's policy/practice/custom/procedure

\* See Williams v. Barrington (9th Cir. 2015) 715 F.3d 1182; Hilao v. Estate of Mar-  
 rcos (9th Cir. 1996) 103 F.3d 767, 778 n.5; See 5 U.S.C. § 500 et. seq.

1 implementing/applying the unconstitutional  
2 prison regulation.\* Even if it was passed  
3 by the Oklahoma Administrative Procedures  
4 Act, the Oklahoma Legislature and Office  
5 of Administrative Law passed a regulation  
6 that exceeded/exceeds their authority<sup>under</sup>  
7 and discriminates under the U.S. Consti-  
8 tution's Equal Protection Clause under the  
9 14th Amendment. Since ~~it~~<sup>is</sup> the prison  
10 regulation may be being applied using an  
11 "underground" policy/practice/custom/procedure, Peti-  
12 tioner does not have to exhaust remedies.

13  
14 Accordingly, Petitioner respectfully  
15 requests that the Court waive the  
16 exhaustion requirement, or at least order  
17 service on respondent(s) to say what  
18 remedies are available to Petitioner

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
\*See 5 U.S.C §500 et. seq.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes If yes, continue with number 13. ☐ No If no, skip to number 15.

13. a. (1) Name of court: \_\_\_\_\_  
 (2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_  
 (3) Issues raised: (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (4) Result (attach order or explain why unavailable): \_\_\_\_\_  
 (5) Date of decision: \_\_\_\_\_
- b. (1) Name of court: \_\_\_\_\_  
 (2) Nature of proceeding: \_\_\_\_\_  
 (3) Issues raised: (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (4) Result (attach order or explain why unavailable): \_\_\_\_\_  
 (5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

The delay is due to petitioner's transfer to SATF, SATF's retention of his property, and there-

16. Are you presently represented by counsel? ☐ Yes ☒ No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes ☐ No If yes, explain:

In the California State Courts and federal Eastern District Court

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This is the proper court

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: \_\_\_\_\_

[Signature]  
 (SIGNATURE OF PETITIONER)

## Attachment 15

1 after the CDCR officers taking a  
2 large quantity of petitioner's documents (legal)  
3 in CTF's receiving and release, then  
4 in SATF's receiving and release. On  
5 top of all of that petitioner has  
6 a lot of litigation that was going  
7 on, and is still going on, in the  
8 California state courts, and federal  
9 Eastern District Court in Sacramento,  
10 California.  
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Exhibit 1



STATE OF CALIFORNIA  
REQUEST FOR CORRESPONDENCE APPROVAL  
CDCR 1074 (REV. 08/08)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

|  |  |  |  |
|--|--|--|--|
| FR: <u>Shawn Hutton</u><br>TITLE: <u>Warden</u><br>INSTITUTION/ PAROLE REGION: <u>Correctional Training Facility</u><br>ADDRESS: <u>Highway 101 North</u><br><u>Soledad, CA 93960</u>  |  | TO: <u>Debbie Aldridge</u><br>TITLE: <u>Warden</u><br>INSTITUTION/ PAROLE REGION: <u>Amber Bassett Correctional Center</u><br>ADDRESS: <u>29501 Kickapoo Road</u><br><u>McCloud, OK 74851</u>  |  |
| 1. INMATE/PAROLEE REQUESTING TO CORRESPOND:<br><u>Larry A. Sermene</u><br>CDC NUMBER: <u>AM2420</u><br>CURRENT STATUS: <input checked="" type="checkbox"/> INMATE <input type="checkbox"/> PAROLEE<br>KNOWN GANG AFFILIATION(S): <u>None</u> |  | 2. INMATE/PAROLEE UNDER YOUR JURISDICTION:<br><u>Amber Hilberlina</u><br>CDC NUMBER: <u>060C # 672250</u><br>CURRENT STATUS: <input checked="" type="checkbox"/> INMATE <input type="checkbox"/> PAROLEE<br>KNOWN GANG AFFILIATION(S): <u>None known</u>   |  |
| MISCELLANEOUS INFORMATION/COMMENTS:<br><u>For Legal Matters</u><br><u>Pursuant to Johnson v.</u><br><u>Avery (1968) 393 U.S. 483</u>   |  | MISCELLANEOUS INFORMATION/COMMENTS:<br><u>For Legal Matters pers.</u><br><u>to Johnson v. Avery</u><br><u>(1968) 393 U.S. 483</u>  |  |
| COUNSELOR/AGENT'S RECOMMENDATION:<br><input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DENIED for the following<br>reason: <u>No Reason to Deny</u>  |  | COUNSELOR/AGENT'S RECOMMENDATION:<br><input type="checkbox"/> APPROVED <input checked="" type="checkbox"/> DENIED for the following<br>reason: <u>Immediate family only</u>  |  |
| COUNSELOR/AGENT'S SIGNATURE: <u>[Signature]</u><br>DATE: <u>2/16/16</u><br>COUNSELOR/AGENT'S NAME (TYPED OR PRINTED): <u>S. Hutton</u>   |  | COUNSELOR/AGENT'S SIGNATURE: <u>[Signature]</u><br>DATE: <u>3-8-16</u><br>COUNSELOR/AGENT'S NAME (TYPED OR PRINTED): <u>Deputy Warden</u>  |  |
| SUPERVISING AUTHORITY'S DECISION:<br><input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DENIED for the following<br>reason: _____   |  | SUPERVISING AUTHORITY'S DECISION:<br><input type="checkbox"/> APPROVED <input checked="" type="checkbox"/> DENIED for the following<br>reason: <u>Immediate family only</u>  |  |
| SIGNATURE: <u>[Signature]</u><br>DATE: <u>2-25-16</u><br>TITLE: <u>Captain</u>   |  | SIGNATURE: <u>[Signature]</u><br>DATE: <u>3-8-16</u><br>TITLE: <u>Deputy Warden</u>  |  |
| INSTRUCTIONS:<br>If request is denied, note reason and notify inmate/parolee #1<br><br>If request is approved by requesting facility, retain pending copy and forward request to inmate/parolee #2's supervising authority.                  |  | INSTRUCTIONS:<br>Receiving facility to retain last two copies (1 for inmate/parolee, 1 for inmate/parolee's file and return to requesting facility).<br><br>DISTRIBUTION: (After processing):<br>Original - Inmates/Parolee #1's File<br>Copy - Inmates/Parolee #1<br>Copy - Inmates/Parolee #2's File<br>Copy - Inmates/Parolee #2<br>Copy - Retained by requesting facility until process completed. |  |

To: Clerk of the Court  
U.S. District Court  
Northern District of California  
450 Golden Gate Ave., Box 36060  
San Francisco, CA 94102-3483

Re: Civil Rights Complaints

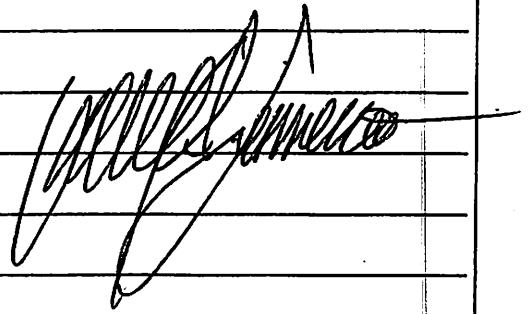
Subject: Originals and Copies

Dear Clerk:

Please find four original complaints and two copies for each, with the exception of "Larry A. Serrano v. Oklahoma Department of Corrections". There is one copy included for that only, because the law library ~~and~~<sup>s</sup> clerk made a mistake as to the copies for that. For service on all defendants, to save the Court's time and resources, I would like to have the all of the defendants served by publication pursuant to Cal. Code of Civil Proc. § 415.50. As I am a prisoner, it's the most expeditious manner. Your assistance with this matter is greatly appreciated.

Respectfully,

Dated: 10/2/16

A handwritten signature in black ink, appearing to read "Larry A. Serrano", written over the signature line.

Larry A. Serrano